

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JENNIFER BRADLEY,

*Plaintiff,*

v.

AMERICAN UNIVERSITY, ET AL.,

*Defendants.*

Civil Action No. 1:16-cv-00346-RBW

**PLAINTIFF'S OPPOSITION TO DEFENDANT USA'S  
MOTION FOR SUMMARY JUDGMENT AND CROSS-MOTION FOR SUMMARY  
JUDGMENT PERTAINING TO AFFIRMATIVE DEFENSES**

**COMES NOW** Plaintiff, by and through undersigned counsel, and respectfully submits to this Honorable Court her Opposition to Defendant USA's Motion for Summary Judgment and Cross-Motion for Summary Judgment Pertaining to Affirmative Defenses. In response thereto, Plaintiff states the following and relies upon the accompanying Memorandum of Points and Authorities as well as the arguments set forth in ECF Document Nos. 86 – 86-29:

1. Defendant USA failed to produce any facts or evidence to support the numerous affirmative defenses asserted. To the extent that they failed to proffer any such evidence for the affirmative defenses of Affirmative Defense 3: Employee Under the Power and Control of Another; Affirmative Defense 6: Contributory Negligence; Affirmative Defense 9: Contractual Indemnification, such defenses should be considered waived and dismissed.
2. Defendant USA waived any right to seek a tender of defense by waiting over two years to tender the defense after having already accepted Dr. Higgins' tender of the defense to the government.
3. Defendant USA's position is belied by the executed Westfall Certification.
4. Assuming *arguendo* that the Court does not dismiss these affirmative defenses outright, there exists a disputes of material fact that foreclose the granting of summary judgment.

5. Defendants have failed to produce any facts or evidence to support the numerous affirmative defenses asserted. To the extent that they have failed to proffer any such evidence for the vast majority of the asserted defenses, such defenses should be considered waived and dismissed.

6. With regard to the affirmative defenses of assumption of the risk and contributory negligence, even assuming all facts and inferences in light most favorable to the non-moving parties, the Defendants have still failed to meet their burden of proof.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 1st day of November, 2019, a true copy of the foregoing ECF File

System was provided via the Court's ECF system to:

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